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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/645,866	08/24/2000	Kenneth A. Lauffenburger	020533.0238	4021

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Baker Botts LLP
2001 Ross Avenue
Dallas, TX 75201-2980

EXAMINER

HARPER, KEVIN C

ART UNIT	PAPER NUMBER
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2666

DATE MAILED: 01/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/645,866

Applicant(s)

LAUFFENBURGER ET AL.

Examiner

Kevin C. Harper

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 October 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-5,7-18,20,21,23-26,29,30,34 and 37-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,3-5,7-18,20,21,23-26,29,30 and 34 is/are allowed.
- 6) ☒ Claim(s) 37-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Response to Arguments

Applicant's arguments filed October 21, 2005 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, the indicated allowability of claims 37-39 is withdrawn and a new ground of rejection is made in view of Balakrishnan, Sriram and Sala or Thodiyil.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 37-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Balakrishnan et al. ("The Effects of Asymmetry on TCP Performance") in view of Sriram (US 5,463,620 and Sala et al. (US 2001/0053152).

1. Regarding claims 37-38, Balakrishnan discloses a system (fig. 2, router) for packet transmission in a communications network having asymmetrical connections (page 77, Introduction, 2nd para.) comprising an inherent communications manager and memory to receive TCP packets, determine if a packet is a bypass packet or non-bypass packet, and transmit the several bypass packets toward a communication link between two non-bypass packets (page 82, Scheduling Data and Acks, 1st para, line 5 through the 2nd para., line 4; note: ACK-first scheduling).
2. However, Balakrishnan does not disclose transmitting a maximum number of bypass packets between a communication of two non-bypass packets. Sriram discloses transmitting a maximum number of packets during a scheduling operation, where packets are queued separately

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(col. 5, lines 40-44). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to limit the number of bypass packet transmitted in the invention of Balakrishnan in order to prevent starvation or excess delay of non-bypass packets (Sriram, col. 1, lines 45-46 and 53-56).

3. Further, Balakrishnan in view of Sriram does not disclose that the communication manager resides in a modem coupled to a host computer. Sala discloses an external modem coupled to a host computer for controlling the transmission of data (fig. 1, item 104, 114 and 112; para. 23 and para. 51, lines 4-14). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to have a communication manager in a modem in the invention of Balakrishnan in view of Sriram in order to provide priority control of data transmissions over a network (Sala, para. 21-22).

Claims 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Balakrishnan et al. ("The Effects of Asymmetry on TCP Performance") in view of Sriram (US 5,463,620) and Thodiyil (US 6,956,818).

4. Balakrishnan in view of Sriram recites the system as noted in the rejection of claims 37-38 above. However, Balakrishnan in view of Sriram does not disclose that the communication manager resides in a host computer. Thodiyil discloses a communication manager residing in a host computer (figs. 1 and 3; col. 2, lines 20-39; note: network interface card of host computer). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to have a communication manager reside in a host computer in the invention of Balakrishnan in view of Sriram in order to provide priority control of data transmissions over a network (Thodiyil, col. 1, lines 36-46 and col. 2, lines 4-17).

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Allowable Subject Matter

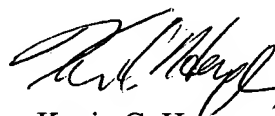
5. Claims 1, 3-5, 7-18, 20-21, 23-26, 29-30 and 34 are allowed.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Harper whose telephone number is 571-272-3166. The examiner can normally be reached weekdays from 11:00 AM to 7:00 PM ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Seema S. Rao, can be reached at 571-272-3174. The centralized fax number for the Patent Office is 571-273-8300. For non-official communications, the examiner's personal fax number is 571-273-3166 and the examiner's e-mail address is kevin.harper@uspto.gov.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications associated with a customer number is available through Private PAIR only. For more information about the PAIR system, see portal.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kevin C. Harper

January 9, 2006